APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 65)

PERSONAL INFORMATION

1. Full Name: **Alexander Westbrook Samuels**

2. Have you ever used or been known by any other name? **No**

3. Office Address: **2005 N. Central Ave. Phoenix, Arizona 85004**

4. How long have you lived in Arizona? What is your home zip code?

I have lived in Arizona since 2000, except for three years when I attended law school out of state. My home zip code is 85006.

5. Identify the county you reside in and the years of your residency.

Maricopa County, 2000-2008 and 2011-Present

6. If nominated, will you be 30 years old before taking office? ■ yes ☐no

If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? ■ yes ☐no

7. List your present and any former political party registrations and approximate dates of each:

Democrat, 2004 to Present

(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: **Male**

Race/Ethnicity: **White**

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

Harvard Law School, Cambridge, MA
Juris Doctor, May 2011

Arizona State University, Tempe, AZ
Bachelor of Science, May 2007

During both high school and college, I also took a handful of classes at community colleges in Maricopa County to earn credits towards my degree at Arizona State University. Those community colleges were:

Paradise Valley Community College, Phoenix, AZ
Rio Salado College, Tempe, AZ
Scottsdale Community College, Scottsdale, AZ

10. List major and minor fields of study and extracurricular activities.

Harvard Law School
Extracurricular Activities:

- **Ames Moot Court Competition**
- **Harvard Law and Policy Review, Editor**
- **Judicial Process in Trial Courts Clinic – West Roxbury District Court**
- **Criminal Prosecution Clinic – Student Prosecutor, Brighton District Court**
- **Legal Intern, Child Protection Unit, Suffolk County District Attorney's Office**

Arizona State University
Major: Political Science (Barrett Honors College), *summa cum laude*
Extracurricular Activities:

- **Member and Policy Director, Young Democrats**
- **Field & Media Intern, Jim Pederson for U.S. Senate**
- **Co-Founder and Policy Director, Roosevelt Institute Chapter**
- **Sigma Alpha Lambda Honor Society**

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

Arizona State University

I attended ASU on a Provost Scholarship, which provided me a full tuition waiver and small stipend. I also received a small scholarship from the Paradise Valley Rotary Club.

While I was a student at ASU, I worked significant hours (1) at a local golf shop, (2) at a mortgage company, and (3) as a teacher and tutor of several standardized tests at the Princeton Review (where I continued working full-time after college). During my freshman year, I worked the first two of those jobs simultaneously. Because of this work, I was fortunate to graduate from college without any student debt.

I was eager to get out into the "real world," so I graduated from ASU in three years. To accommodate my work schedule, I took a few classes at local community colleges to squeeze in a sufficient number of credit hours. I graduated Phi Beta Kappa and *summa cum laude* from the Barrett Honors College.

Also while at ASU, faculty members in the political science department selected me to be a Junior Fellow for the department. Through that program, I was able to (1) serve as a research assistant for the department chair, (2) undertake graduate-level course work, and (3) design and teach a one-credit undergraduate course at ASU.

Harvard Law School

In law school, I sought out opportunities to spend time outside the classroom, mostly by participating in clinical programs. Through one such program, I worked closely with a judge at a community court in the West Roxbury neighborhood of Boston, Massachusetts. I also interned, volunteered, and participated in clinical programs with the Suffolk County District Attorney's Office from my 1L summer to my 3L year. There, I worked first in the Child Protection Unit and later in a community court in the Brighton neighborhood of Boston.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

State Bar of Arizona
November 4, 2011

United States District Court for the District of Arizona
November 18, 2013

United States Court of Appeals for the Ninth Circuit
March 28, 2014

United States Court of Appeals for the District of Columbia Circuit
June 26, 2024

United States Supreme Court
February 21, 2023

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No**

b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No**

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Arizona Attorney General's Office *Principal Deputy Solicitor General*	**Jan. 2023 – Present**	**Phoenix, AZ**
United States Attorney's Office *Assistant United States Attorney* *Section Chief, Violent Crimes/Indian Country* *Tribal Liaison*	**Dec. 2014 – Jan. 2023** **Aug. 2019 – Jan. 2023** **Jan. 2018 – Aug. 2019**	**Phoenix, AZ**
Perkins Coie *Associate* **Perkins Coie Brown & Bain** *Summer Associate*	**Oct. 2013 – Dec. 2014** **Summer 2010**	**Phoenix, AZ**
United States Court of Appeals for the Ninth Circuit, Hon. Andrew D. Hurwitz *Law Clerk*	**July 2012 – Aug. 2013**	**Phoenix, AZ**
Arizona Supreme Court **Hon. Andrew D. Hurwitz** *Law Clerk*	**Aug. 2011 – July 2012**	**Phoenix, AZ**
The Princeton Review *Teacher & Master Tutor: SAT, ACT, GRE, GMAT, LSAT, & AP United States History*	**Jan. 2006 – Aug. 2008**	**Tempe, AZ**

Periods of unemployment between 2008 and 2011 were while I was a law student. I took a break of slightly less than three months in 2013, between the end of my clerkship and the start of my employment at Perkins Coie. During that time, I hiked the John Muir Trail in the Sierra Nevada mountains and walked the Camino de Santiago from southern France to the Atlantic Ocean in northwestern Spain.

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

***See* Attachment D for a list of current attorneys at the Arizona Attorney General's Office.**

***See* Attachment E for a 2023 list of attorneys at the United States Attorney's Office, my previous employer.**

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

Attorney General's Office

As Arizona's Principal Deputy Solicitor General, I have a remarkably diverse law practice. The Solicitor General's Office supervises all appellate litigation at the Attorney General's Office, including civil and criminal appeals. Also within our office, we have a Special Litigation Section that specializes in constitutional litigation, other high-profile civil litigation, and non-litigation work like the writing of Attorney General Opinions.

Much of my role is supervisory in nature, so I spend significant time on management and administration matters. The Solicitor General and I manage a division of approximately 60 attorneys and staff. Our office also frequently advises other divisions of the Attorney General's Office on appellate and other complex legal issues, particularly in the area of constitutional law. As for the legal work that I handle directly, an approximate breakdown of that work is:

- **Civil Appellate Litigation: 25%**
- **Civil Trial Litigation: 40%**
- **Criminal Appeals and Post-Conviction Litigation: 20%**
- **Non-Litigation Legal Work: 15%**

On the civil side, the primary focus of my work is on constitutional law, often in defense of state statutes when they are challenged as unconstitutional. Other areas of civil litigation that I handle regularly include election law, litigation about the separation of powers, and questions of statutory interpretation.

To point to a few other representative examples, I have also been involved in cases challenging federal executive action (including one case I argued in the Ninth Circuit and one currently pending in district court), environmental and water law, and civil litigation relating to the scope of victims' rights in criminal cases. Because I help supervise all of the civil appellate work at the Attorney General's Office, I edit briefs and prepare lawyers for oral argument in all areas of appellate litigation in which the State is involved. I also help manage our office's amicus curiae practice, both in Arizona and nationally. I have helped author amicus briefs in the Arizona Supreme Court, Ninth Circuit, and United States Supreme Court.

On the criminal side, the appellate work I handle and supervise mostly consists of direct appeals from felony criminal convictions. During my time at the Attorney General's Office, I have argued one such case at the Arizona Supreme Court and one such case at the United States Supreme Court. I also am involved in appellate and post-conviction litigation in capital cases.

As for non-litigation work, I am routinely involved in drafting and editing Attorney General Opinions. I also help oversee the Office's government accountability work and sometimes advise state agencies and high-level officials at those agencies. Finally, I help the Attorney General shape policy initiatives, such as a project to expand opportunities for expungement of certain marijuana-related convictions and arrests.

United States Attorney's Office

Before taking my current job in January 2023, I served as an Assistant United States Attorney for eight years. There, I also served in a management and supervisory role for my last 3.5 years. Beyond my management responsibilities, my legal work at the U.S. Attorney's Office was approximately:

- **Criminal Appellate Litigation: 10%**
- **Criminal Trial Litigation: 85%**
- **Civil Litigation: 5%**

Most of the litigation I handled and supervised related to the investigation and prosecution of violent crimes. I served as the office's felony prosecutor of crimes occurring on public lands, such as Grand Canyon National Park. Most of my cases, though, came from tribal communities across Central and Northern Arizona. The most frequent types of cases I handled were homicides, sexual assaults, child abuse (including sexual abuse), domestic assaults, and other aggravated assaults.

17. List other areas of law in which you have practiced.

In addition to my work prosecuting violent crimes at the U.S. Attorney's Office, I handled other types of cases while I was there. I had a jury trial in a case where the defendant had coordinated the international purchase and interstate sale of more than 120 kilograms of cocaine (and related money laundering). I also worked on a few other large drug trafficking prosecutions, as well as matters from our Financial Crimes & Public Corruption section and Civil Division. Like nearly all lawyers in the office, I started in the Southwest Border/General Crimes Section, where I worked for my first eight months. And for approximately two years, I served as the office's Environmental Crimes Coordinator.

Before the United States Attorney's Office, I worked at the law firm Perkins Coie (previously Perkins Coie Brown & Bain). There, I represented an inmate at a civil rights trial in federal court, criminal defendants, and several individuals seeking immigration relief in Immigration Court, the Board of Immigration Appeals, and the Ninth Circuit. I also worked on complex commercial litigation matters at the trial and appellate levels.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

None

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

I have had extensive legal writing experience throughout my career. As a law clerk, I wrote dozens of bench memoranda and the first draft of several published opinions. In each job since then, I have litigated regularly in federal and state trial and appellate courts. I have also performed an array of other writing tasks in each job, such as assisting with the drafting of a mediation statement in private practice.

On the appellate front, I have participated in the drafting or editing of more than 100 appellate briefs. This includes briefs in the United States Supreme Court, Arizona Supreme Court, Ninth Circuit, and Arizona Court of Appeals. The briefs I have helped author include opening briefs, answering briefs, reply briefs, petitions for special action and responses thereto, petitions for review and responses thereto, briefs in opposition to petitions for writ of certiorari, and amicus curiae briefs.

In the trial courts, I have authored countless motions and responses. As a criminal defense attorney, I authored a motion to dismiss, motions to compel discovery, and motions relating to the Classified Information Procedures Act on behalf of a criminal defendant. As a prosecutor, I authored many motions and responses to motions, such as responses to motions to suppress and various motions in limine in advance of trials. And in civil litigation, I have similarly authored many types of motions and responses, such as motions to dismiss and motions for summary judgment. I have also been lead or associate counsel on several special actions in the state trial courts.

At the U.S. Attorney's Office, I frequently authored legal documents beyond the ones I've mentioned above. These included dozens of sentencing memoranda, plea agreements, indictments, complaints, cooperation agreements, search warrants, and other investigative applications. In my roles as Section Chief and Tribal Liaison, I was sometimes tasked with drafting and revising Department of Justice policies, such as policies governing charging, plea agreements, and tribal consultation.

Now, as Principal Deputy Solicitor General, I am involved in drafting and editing many legal documents beyond the motions and briefs that cross my desk each week. I am involved, for example, in drafting and editing nearly all Attorney General Opinions issued by our office. I am also often involved in drafting letters on subjects of public significance, such as letters documenting findings of an investigation by our Government Accountability Unit. I assist the Attorney General with certain statutory responsibilities, such as revising and approving ballot language for the election. I work with our legislative team on proposals to change statutes. I also help the Solicitor General oversee our office's efforts relating to rule change petitions received by the Arizona Supreme Court. That includes the drafting of comments on a wide array of rule change petitions each year.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes.** If so, state:

a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

I represented four clients in Immigration Court, including one client at the Board of Immigration Appeals.

b. The approximate number of these matters in which you appeared as:

Sole Counsel: **2**

Chief Counsel: **1**

Associate Counsel: **1**

In my current position, I also assist with appellate litigation that stems from agency proceedings, but I have not appeared in adversary proceedings before an agency in any such case.

21. Have you handled any matters that have been arbitrated or mediated? **Yes**
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: **0**

Chief Counsel: **0**

Associate Counsel: **1**

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

United States v. Lomaomvaya, Soohafyah, and Juvenile Male
CR-17-8070-PCT-DLR (Lomaomvaya)
CR-17-8021-PCT-DLR (Soohafyah)
SEALED CASE (Juvenile Male)
United States District Court for the District of Arizona, Judge Douglas Rayes
May 2016 – Aug. 2017

Summary

These three criminal cases all stemmed from the same crime—the brutal murder of a Hopi woman who was stabbed more than 30 times by the defendants, all three of whom were 16 years old or younger. Ms. Lomaomvaya and Ms. Soohafyah planned the murder in Facebook messages over a period of more than two months. Shortly before the murder, they recruited a 13-year-old boy to help them carry out the crime. The motive was

ostensibly to steal the victim's car, but the defendants drove the car only a few miles away before abandoning it.

All three defendants were charged as juveniles. Juvenile Male, who was the youngest defendant and least culpable, remained in juvenile court. All other details surrounding his case thus remain sealed. Ms. Lomaomvaya and Ms. Soohafyah, who would have faced mandatory life-without-parole sentences if convicted as adults, agreed to be transferred to adult court in exchange for plea agreements that offered them significantly more lenient sentences. Ultimately, they were sentenced to 16 years and 20 years, respectively.

Significance

Even among the many heart-wrenching cases I prosecuted at the U.S. Attorney's Office, this one stands out. The crime itself was senseless and tragic, with a direct effect on dozens of the victim's family members. There are moments from the case I simply will not forget, including being in a small home with those family members gathered around to hear updates about the case, all experiencing grief in unique ways.

Of course, given the extremely young age of the defendants, their families too were greatly impacted. Indeed, the crime understandably affected the entire community. Balancing the horrific nature of the crime with the extreme youth of the defendants was incredibly difficult in trying to figure out how best to resolve the case. There are, unfortunately, no good answers in a case like this one. My hope is that we did the best that could be done to further the interests of justice under the circumstances.

Co-Counsel

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Opposing Counsel

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United States v. Maccaronio
CR-17-8241-PCT-JJT
United States District Court for the District of Arizona, Judge John J. Tuchi
Sep. 2017 – Nov. 2018

Summary

Mr. Maccaronio was charged with cyberstalking and making threats in interstate commerce. He had been part of an active online discussion group, which consisted primarily of people who attended an annual Mad Max-themed music festival in a remote part of the California desert. After Mr. Maccaronio repeatedly used the online forum to make threats, and after he ignored several warnings about his behavior, organizers banned him from attending the annual festival. In response, he escalated his threats, including by specifically (1) threatening to drive a truck through the populated festival area, and (2) claiming that he had secretly planted a bomb at the festival location. When the FBI executed a search warrant at his home and arrested him, they found an arsenal of weapons in his home and a large, military-style truck parked in the driveway.

Significance

This case provided a window into the world of online threats, which have unfortunately proliferated in recent years. Prosecutors must prioritize the most serious of those threats and this case fell into that category.

The case also provides a good example of how the effective resolution of a criminal case does not always need to involve incarceration. While the case was pending, I traveled to California with my co-counsel and an FBI agent to meet with several victims of Mr. Maccaronio's most direct threats. They expressed significant concern for their safety, but made clear that they thought the most effective way to protect against future harm was to ensure Mr. Maccaronio was closely supervised.

We subsequently negotiated a plea agreement with a recommended probation sentence that included strict conditions, including significant restrictions on—and monitoring of—Mr. Maccaronio's online activities. As part of the plea agreement, Mr. Maccaronio also agreed to relinquish his

ownership interest in all of his firearms and ammunition. As a result of his conviction, he may not legally possess firearms or ammunition going forward.

Co-Counsel

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United States v. Boone, Gray, C. Begay, and N. Begay
CR-18-8293-PCT-DLR
United States District Court for the District of Arizona, Judge Douglas Rayes
Aug. 2018 – Mar. 2022

Summary

The victim in this case was murdered in the Kayenta area of the Navajo Nation. The crime was discovered when his body and truck (which the defendants had attempted to burn) were found miles away in the desert. The purported motive for the crime was that the victim had behaved inappropriately towards one of the defendants, who was female. The defendants then took it upon themselves to dispense vigilante justice for this alleged bad behavior. At the direction of Mr. Boone and with the participation of all four defendants at various stages of the crime, the victim was beaten, tied up and placed in the back of a vehicle, and eventually killed.

Significance

The culpability of the four defendants in this case varied significantly. Thus, in trying to resolve the case with four plea agreements it was not easy to ensure that their respective culpability levels were appropriately reflected

in the ultimate outcomes. Eventually, Mr. Boone—who was the ringleader—received the longest sentence of 17 years. His co-defendants received sentences of 15 years, approximately 7 years, and approximately 3 years.

In part due to the COVID-19 pandemic and in part due to the complexity of this serious case, the case ultimately took more than 3.5 years to resolve.

Co-Counsel

Sharon Sexton* (Retired)
Contact information disclosed in confidential section.

Opposing Counsel

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Eric Kessler (Counsel for C. Begay)
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Barbara Hull* (Counsel for C. Begay)
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I have not been able to verify this as Ms. Hull's current contact information.

23. Have you represented clients in litigation in Federal or state trial courts? **Yes**
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts:	**250**
State Courts of Record:	**25**
Municipal/Justice Courts:	**0**

The approximate percentage of those cases which have been:

Civil: **15%**

Criminal: **85%**

The approximate number of those cases in which you were:

Sole Counsel: **210**

Chief Counsel: **40**

Associate Counsel: **25**

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: **15%**

You argued a motion described above **10%**

You made a contested court appearance (other than as set forth in the above response) **75%**

You negotiated a settlement: **95%**

The court rendered judgment after trial: **0%**

A jury rendered a verdict: **5%**

The number of cases you have taken to trial:

Limited jurisdiction court **0**

Superior court **0**

Federal district court **9**

Jury **9**

24. Have you practiced in the Federal or state appellate courts? **Yes**
If so, state:

The approximate number of your appeals which have been:

Civil:	**30**
Criminal:	**70**
Other:	**1 (Immigration)**

The approximate number of matters in which you appeared:

As counsel of record on the brief:	**40**
Personally in oral argument:	**10**

In my current role as Principal Deputy Solicitor General, I help supervise all of the appellate work of the Attorney General's Office. In that role, I edit briefs and prepare attorneys for oral argument on civil and criminal appeals on a consistent basis. In the numbers above, I have not counted all of these appeals, and have instead approximated only the number of appeals in which my role was more substantial.

Similarly, I have not included appeals at the U.S. Attorney's Office for which I served only as supervisor or participated only in moot courts, and thus had more limited involvement.

25. Have you served as a judicial law clerk or staff attorney to a court? **Yes**
If so, identify the court, judge, and the dates of service and describe your role.

I served as a judicial law clerk to the Hon. Andrew D. Hurwitz for two years. When I started with him in August 2011, he was Vice Chief Justice of the Arizona Supreme Court. Ten months later, he became a Circuit Judge on the United States Court of Appeals for the Ninth Circuit. He asked me to stay for an extra year after his confirmation, and I gladly said yes.

Clerking for Judge Hurwitz was a formative and engaging experience. Like most law clerks, we wrote bench memoranda and drafted opinions. Judge Hurwitz, however, prioritizes law clerk engagement. Substantively, he asked for our involvement in many tasks; for example, on the Arizona Supreme Court he often had his clerks do substantial research on cases with pending petitions for review (i.e., cases the Court had not yet decided to take).

On a day-to-day basis, we were in constant conversation with him. Most days, we met with him twice—once in the morning and once in the late-afternoon. In between, he frequently popped into our offices with ideas, sent us emails, and debated all sorts of things with us over lunch. Drafting opinions with Judge Hurwitz was its own type of dialogue, often resulting in more than 20 versions of the document. It was impossible not to learn from this the value of constantly being on the lookout for small improvements left to be made.

I loved all of this and my experience with Judge Hurwitz changed me substantially for the better. I did not grow up around the legal profession and had little idea how to navigate it when I arrived in Judge Hurwitz's chambers. To the extent I've had any success making meaningful contributions in the years since, I owe a lot of that to him.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Smith v. Arizona
Case No. 22-899
Supreme Court of the United States
March 2023 – June 2024

Summary

In January 2024, I argued this case in the U.S. Supreme Court. The case presented the question of how the Sixth Amendment's Confrontation Clause applies to expert testimony by crime lab analysts. Mr. Smith had been convicted of several drug-related offenses. At trial, the State had called an analyst from the DPS Crime Lab to testify about the lab testing of substances Mr. Smith had possessed (to confirm those substances were in fact illegal drugs). The testifying witness, however, was not the lab analyst who actually conducted the testing; the testing analyst had moved out-of-state between the testing and trial.

The Supreme Court granted review to decide whether this type of "substitute" expert testimony is permissible in a criminal case. They ultimately decided that—at least on the unique facts of this case—this type of testimony is not legally permitted, announcing a new rule that will now be applied around the country.

Significance

This case is the culmination of a long line of similar cases at the U.S. Supreme Court, dating back to 2008. The Court has struggled over the years with whether this type of testimony violates the Confrontation Clause, fracturing 5-4 in two prior cases and failing to garner five votes for any single holding in a third case.

We knew the case would be an uphill battle for us when the Court granted review of the case. And we were worried about the potential consequences of a far-reaching decision in Mr. Smith's favor. Because the Court's decisions in this area have the potential to impact all forensic evidence—not just drug testing—the decision could have created drastic complications in the prosecutions of homicides and other violent crimes, where DNA testing and other forensic testing are now quite common.

Some members of the Court were tuned into these potential consequences. And although only time will tell how far-reaching the impact of the Court's decision will be, I believe our work in the case helped lead the Court to a narrower result. The Government in future cases will still have good arguments that the decision provided relief to Mr. Smith and many other similarly situated defendants without necessarily jeopardizing the prosecutions of serious violent crimes around the country. I am proud to have been part of a team of lawyers that (I believe) represented the State well in our nation's highest court and ensured that great arguments from all sides were developed and presented to the Justices.

Co-Counsel

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Pettit v. Smith, et al.
Case No. CV-11-2139-PHX-DGC
United States District Court for the District of Arizona
Judge David G. Campbell
June 2014 – Dec. 2014

Summary

While I was at Perkins Coie, the firm was appointed by Judge Campbell to represent an inmate named Ron Pettit in a civil rights suit under Section

1983. The suit was against four prison guards for using excessive force and injuring Mr. Pettit's hand.

The case presented significant issues surrounding destruction of evidence and spoliation, and many of those issues were litigated in advance of trial and at trial. A videotape of the incident, at least one report about the incident, and a photograph of Mr. Pettit's injured hand all went missing after the incident was reported to Department of Corrections management.

Along with co-counsel Thomas Ryerson, I represented Mr. Pettit at an eventual jury trial, where the jury found three guards liable for damages, including $100,000 in compensatory damages and $45,000 in punitive damages.

Significance

This case—more than any other—helped shape my view of what it means to be a lawyer. It helped confirm what I had hoped to be true—that our courts can be a place where rights are vindicated for individuals who have been wronged, even if those individuals may otherwise seem unsympathetic. Put differently, our courts in this case helped provide a level playing field between an indigent inmate and the Arizona Department of Corrections. That is not an easy thing to do and not something that is even attempted in many parts of the world.

Even if our courts are imperfect, it was wonderful to see them at their best in this case. The amount of money awarded to our client was obviously an unthinkable amount for him at the time, but it was clear that what he cared about most was that he had been heard, understood, and validated.

As I discuss further in response to Question 62 below, I also know that the case positively impacted other participants' beliefs about the justice system, including my client's and a juror's. Those positive effects that result from cases like this one hopefully trickle outward and have the power to help instill public confidence in our system.

Finally, I know that many of us involved in the case have used it as a great example of why more attorneys should get involved in pro bono work, including the district court pro bono program that led to our appointment in this case.

Co-Counsel

Thomas Ryerson
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United States v. Arthur
Case Nos. 16-10005, 16-10328, and 19-10165 (Ninth Circuit)
Case No. CR-14-00848-PHX-SPL (District of Arizona, Judge Steven P. Logan)
July 2016 – Dec. 2019

Summary

I represented the United States on appeal in this case, which involved the murder of an on-duty, Salt River Pima-Maricopa Indian Community tribal police officer during a traffic stop. Mr. Arthur was convicted of first-degree murder after a jury trial that two of my colleagues handled.

After briefing and argument, the Ninth Circuit affirmed Mr. Arthur's convictions and life sentence. The case was remanded to the district court to address a legal error (which I had conceded on appeal) relating to the award of restitution to the victim's estate. I handled resolution of that issue on remand. A significant restitution award was entered by the district court and the district court's order was summarily affirmed by the Ninth Circuit in a subsequent appeal.

Significance

This murder of an on-duty, tribal police officer was one of the higher profile Indian Country cases at my office during my years there. The case was not only of tremendous importance to the victim's family, but also to the tribal police department, tribal government, and other stakeholders.

Co-Counsel

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United States v. Sloan
Nos. 17-10400, 21-10222, 21-10285, and 22-10040 (Ninth Circuit)
No. CR-15-8232-PCT-DLR (District of Arizona, Judge Douglas Rayes)
May 2016 – Jan. 2023

Summary

I was trial and appellate counsel in this federal criminal case arising from the Kayenta area of the Navajo Nation. Mr. Sloan kidnapped his estranged wife, beat her, strangled her, dragged her through the desert, and sexually assaulted her. At one point during the incident, Mr. Sloan dug a hole in the ground, put the victim in it, and threatened to kill her. He subsequently moved her to a trailer, where he kept her overnight until she successfully obtained help the next day.

At a jury trial that I handled with co-counsel Sharon Sexton, Mr. Sloan was convicted of kidnapping, assault with intent to commit aggravated sexual abuse, two counts of aggravated sexual abuse, assault of a spouse or intimate partner resulting in substantial bodily injury, and assault of a spouse or intimate partner by strangling or suffocating. His convictions and 27.5-year sentence were affirmed by the Ninth Circuit on direct appeal, and

the Court granted motions for summary affirmance in three subsequent appeals filed by Mr. Sloan.

Significance

During my time at the U.S. Attorney's Office, I handled and supervised many cases involving domestic assault. This case provides a particularly dramatic illustration of the horrors that domestic assault victims can suffer. In addition to the awful conduct listed above, Mr. Sloan had previously assaulted the victim on several prior occasions and had engaged in a variety of shockingly manipulative behavior. In Mr. Sloan's case, convictions and a lengthy prison sentence were absolutely necessary to ensure public safety.

Co-Counsel

Sharon Sexton* (Retired)
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27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Not applicable

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

Not applicable

29. Describe any additional professional experience you would like to bring to the Commission's attention.

I have now served in management roles for more than five years, since August 2019. That experience has helped me grow as a lawyer, as a manager and administrator, and as a person.

At the U.S. Attorney's Office, I served as Section Chief of the Violent Crimes Section and supervisor of the Flagstaff branch office. In that role, I supervised up to 15 individuals at a time, including attorneys and support staff in Phoenix and Flagstaff, the Tribal Liaison, and the Missing & Murdered Indigenous Persons Coordinator. I also spent substantial time coordinating with outside partners, including the federal courts in Phoenix and Flagstaff, law enforcement, and tribes throughout the state.

Now, as Principal Deputy Solicitor General, I work closely with the Solicitor General to manage a division that includes approximately 60 attorneys and staff. We supervise all of the appellate work of the Attorney General's Office; the litigation of constitutional issues in federal and state trial courts; the drafting of Attorney General Opinions; the office's amicus curiae practice in the United States Supreme Court, Arizona Supreme Court, and other courts; government accountability work; and policy initiatives.

Although the Arizona Supreme Court's most visible work may be the decisions it issues in individual cases, I know that a substantial part of the Court's work relates to the administration of Arizona's courts. I believe the lessons I've learned through my management experience thus far would serve me well in helping with that task.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **No**

31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No**

    Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed?

    Not applicable

32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes**

33. Have you paid all state, federal and local taxes when due? **Yes**

34. Are there currently any judgments or tax liens outstanding against you? **No**

35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No**

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No**

37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No**

38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No**

CONDUCT AND ETHICS

39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **No**

40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation?

If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.

I have never been arrested for a felony or misdemeanor, but in an abundance of caution wish to disclose an incident during which I was detained by police at the age of 16. Police handcuffed me and a friend and took us home to our parents, after arresting a third friend who had broken lights along a nearby walking path. I did not break any lights and was never charged with a crime; my involvement in the incident ended when police took me home to my parents.

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **Not applicable**

42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice. **None**

43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **None**

44. List and describe any sanctions imposed upon you by any court. **None**

45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **No**

46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No**

47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No**

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No**

49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No**

PROFESSIONAL AND PUBLIC SERVICE

50. Have you published or posted any legal or non-legal books or articles? **Yes**
If so, list with the citations and dates.

As Associate Web Editor for the American Bar Association's Criminal Litigation Committee, I helped draft several articles that were posted to the ABA's website and sent out to members via e-newsletter. I do not have a copy of any of the articles in my records and have not been able to identify any location where they are still kept online. I do not recall ever being a lead author on any of the articles.

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes**

52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes**
If so, describe.

Law School Teaching as Adjunct Professor

- **State Attorneys General**
  Arizona State University Sandra Day O'Connor College of Law
  Fall 2024
  Co-Professor: Terry Goddard

  This semester, I am teaching this course with former Attorney General Terry Goddard. The three-credit course is designed to cover all aspects of State AG offices around the country. Topics include the powers and duties of Attorneys General, ethics, state agency representation, defending state law against constitutional challenges, consumer protection, multistate litigation, and relationships with other government actors.

- **Federal Criminal Practice & Procedure**
  Arizona State University Sandra Day O'Connor College of Law
  Spring 2022, Spring 2023, and Spring 2024
  Co-Professor: Chalet Braziel

  For the past three years, I have taught this course with Assistant Federal Public Defender Chalet Braziel. The course takes an in-depth look at federal criminal prosecutions, from the investigative stage to sentencing. The class also seeks to provide students with practical training through

written and oral exercises. Among other tasks, students are required to write motions and jury instructions for a fictional case, and are required to give mock arguments for that same case in front of their classmates.

- **Federal Judicial Literacy**
  University of Arizona James E. Rogers College of Law
  Summer 2014
  Co-Professor: Spencer Scharff

  Spencer Scharff and I co-designed and co-taught this evening seminar in Phoenix in Summer 2014. The course was designed to educate students on the organization of the federal judiciary, judicial administration, judicial ethics, and basic jurisdictional issues.

CLE Seminars

- **Dispositive Motions**, Sponsored by Perkins Coie, Phoenix, Arizona (2014)
- **Issues in Judicial Ethics (and Why You Should Care)**, Sponsored by Perkins Coie, Phoenix, Arizona (2014)
- **The Power of Spoliation and Other Lessons Learned From Our First Trial (*Pettit v. Smith*)**, Sponsored by Perkins Coie, Phoenix, Arizona (2014)
- **Voluntariness**, CLE and Training for Law Enforcement Sponsored by the U.S. Attorney's Office and Federal Bureau of Investigation, Flagstaff, Arizona (2016)
- **Voluntariness and *Miranda***, Indian Country Law Enforcement Training Conference, Phoenix, Arizona (2017)
- **Environmental Crimes: Federal and Arizona Violations**, Sponsored by the U.S. Attorney's Office, Arizona Attorney General's Office, and Western States Project, Chandler, Arizona (2018)
- **Tribal Jurisdiction**, Southwest Cross-Jurisdictional Webinar Series, Sponsored by the Arizona State, Tribal, and Federal Court Forum (Virtual Event, 2021)
- **Courts During COVID: Challenges and Successes**, Sponsored by the Ninth Circuit Judicial Historical Society (Virtual Event, 2021)
- **Federal and State Criminal Jurisdiction in Cases Arising from Indian Country**, Sponsored by the Coconino County Attorney's Office, Flagstaff, Arizona (2022)

- **Courtroom Etiquette and Prosecutorial Discretion**, Sponsored by the U.S. Attorney's Office, Phoenix, Arizona (2022)

- **Implementation Challenges of the First Step Act**, Sponsored by the District of Arizona's Annual District Conference, Flagstaff, Arizona (2022)

- **Alternatives to Traditional Prosecution**, Sponsored by the District of Arizona's Annual District Conference, Flagstaff, Arizona (2022)

- **SCOTUS Review: 2023-2024 Term**, Sponsored by the State Bar's Appellate Practice Section, Phoenix, Arizona (2024)

Other Teaching/Legal Training

In addition to teaching the law school courses listed above, I have been a guest lecturer for approximately 6-8 other law school classes, including classes on Trial Advocacy, Criminal Law, Plea Bargaining, and Criminal Procedure.

I also conducted numerous legal trainings for law enforcement and tribal officials during my time at the United States Attorney's Office, such as:

- **Trainings for tribal prosecutors, who often also served as Special Assistant U.S. Attorneys. Topics included juvenile prosecutions in federal court, commonly used federal criminal statutes, and the United States Sentencing Guidelines.**

- **Trainings for tribal law enforcement officers seeking a Special Law Enforcement Commission through the Bureau of Indian Affairs.**

- **Trainings for tribal police officers around Arizona—and particularly for rural tribal police departments—including trainings on search and seizure, interviewing, report writing, and testifying in court.**

- **Discussions about federal criminal law with tribal councils, committees or subcommittees thereof, and individual tribal leaders. Sometimes this took the form of formal presentations about federal criminal law and the activities of the Department of Justice on tribal lands. Other times, there was more informal dialogue about these topics.**

53. List memberships and activities in professional organizations, including offices held and dates.

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **Yes**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

Bar Activities

State Bar Appellate Practice Section (2023 – Present)

Lawyer Representative – United States District Court for the District of Arizona (2019-2023)

- **Chair (2022-2023)**
- **Vice Chair (2021-2022)**

Ninth Circuit Lawyer Representative Coordinating Committee (2021-2023)

United States District Court Tribal Relations Committee (2019-2023)

Federal Bar Association (2015 – Present)

American Bar Association Criminal Litigation Committee (2014-2015)

- **Associate Web Editor**

Arizona Attorneys for Criminal Justice (2013-2014)

- **Amicus and Rules Committee**

Pro Bono Work

I have devoted most of my career to public service. And during my time in private practice, I did more than 500 hours of pro bono work. The highlight of this work was my work on the case of *Pettit v. Smith,* the federal civil rights case I have highlighted elsewhere in this application. Other pro bono work at Perkins Coie was similarly rewarding. I helped defend two criminal cases pro bono, including a case in federal district court and an appeal in Maricopa County Superior Court from a conviction obtained in justice court. Additionally, I represented four clients seeking relief in the immigration courts.

54. Describe the nature and dates of any relevant community or public service you have performed.

Arizona High School Mock Trial Competition
Volunteer Judge, 2015 – Present

Ninth Circuit Civics Contest for High School Students
Volunteer, 2021 – Present

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

Federal Bar Association (National) Younger Federal Lawyer Award (2021)

Department of Justice Director's Award for Superior Performance in Indian Country (2018)

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

Not applicable

Have you voted in all general elections held during the last 10 years? **Yes**

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

I love hiking, backpacking, and generally being in nature. I have hiked the entire John Muir Trail twice, and nearly all of it a third time. I have been to Nepal twice, spending two weeks trekking the Annapurna Circuit on one trip and two weeks trekking in the Everest region on the other. And in 2013, I spent five weeks walking the Camino de Santiago from southern France to the Atlantic Ocean in northwestern Spain. Closer to home, I have spent many nights camped in remote areas of the Grand Canyon and have hiked more than 400 miles of the Arizona Trail, which extends from the Mexico border to the Utah border.

I have done many of these trips alone and really treasure the peace and clear-headedness I gain from solitude in nature. Perhaps for similar reasons, I have a daily meditation practice and regularly go on extended, silent meditation retreats. I have been on six silent retreats, ranging from 7 to 15 days, including a 10-day retreat earlier this year.

Of course, life cannot (and should not) be all silence and introspection. I do my best to stay active in more social ways, dabbling in activities like rock climbing. I also spend a substantial amount of time with a small community of friends who live nearby, frequently spending evenings and weekends with them and their kids—who provide a slightly noisier environment than is provided by solitude in the woods.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? **Yes**

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

I am confident that the law develops best through a robust exchange of ideas among judges and lawyers with diverse perspectives, informed by different life experiences. For courts, this is surely true both externally (when judges interact with lawyers and the public) and internally (when judges interact with each other). On both fronts, it seems to me that the development of the law is the result of constant—and constantly evolving—dialogue. I believe my experiences have positioned me well to make unique contributions to that dialogue.

For starters, the diversity of my law practice has greatly impacted the way I see things and will make me a better judge if I get the opportunity to serve in that role. I have substantial civil and criminal experience, including trial and appellate experience in both areas. I have represented indigent individuals, criminal defendants, the United States, the State of Arizona, private-sector clients, and high-level government officials at every level of the state and federal courts.

Critically, my work has shaped me not only by bringing me into contact with different courts and different areas of law, but by bringing me

into contact with different people and different cultures. The most significant of those experiences was the work I did in tribal communities during my eight years at the U.S. Attorney's Office.

At various times, I served as my office's lead prosecutor for the Hopi Tribe, Havasupai Tribe, and four of Navajo Nation's five Arizona police districts (Kayenta, Tuba City, Chinle, and Window Rock). I thus got to be in those communities—often multiple times each month—to meet with victims, witnesses, and law enforcement. And beyond the work I did on specific cases, I got to attend meetings that sought to find more holistic solutions, including regular multi-disciplinary team meetings attended by tribal social services, tribal police, health care workers, and others—including tribal leaders, tribal judges, and educators.

In my case work, I came to learn firsthand how cultural differences can lead to critical misunderstandings. By way of example, new attorneys and investigators often perceived credibility problems with witnesses from some tribes, as I myself had as a new attorney. I came to learn, however, that those individuals often had different patterns of speech because of the structure of their native language. They also often exhibited certain body language, such as declining to make extended eye contact, based on cultural norms. Although it will never be possible for any of us to understand all of the nuances of cultures beyond our own, I have learned from these experiences how important it is to be mindful of that reality—in any interaction, there is surely something important that I do *not* know.

Later, as Tribal Liaison and then as Section Chief, I worked more directly with tribal leaders on policy initiatives and traveled to most of Arizona's 22 tribes. I helped host regular tribal consultations, listening sessions, and conferences. And through engagement with tribes and others in Northern Arizona, I have also come to know the disconnection and neglect that some Arizonans feel based on their geography. The simple act of showing up matters.

When we started the Northern Arizona Reentry Court Pilot Project—which brought the federal court to Chinle, Arizona once every six weeks—we heard time and again how our presence there changed participants' perspectives about the court system. I heard similar feedback when I helped the federal district court bring its annual conference for judges and practitioners to Flagstaff for the first time and put topics like rural access to justice on the agenda. In all of this work, it was often evident to me how important it is that our institutions take steps to address the understandable lack of trust that some communities have in those institutions.

Finally, aspects of my personal life have also crystallized for me the importance of connection and dialogue among diverse individuals and groups. I am Jewish and my partner is an Arab-American woman who is a leader in her local Arab-American community. Our lives are consistently enriched by conversations we have with each other that are informed by our different backgrounds. And we are well aware that we might not ever have had those conversations if we surrounded ourselves only with people from our own community.

Above all else, these experiences have made clear to me the importance of (1) being mindful of the limitations of one's own experience, (2) surrounding oneself with others who bring a diversity of views and experiences with them, and (3) always remaining curious. Cultural competency is important and I feel fortunate to have gained experience with communities beyond my own, but any judge from any background will know far less than the sum of what they don't know. I hope to be the type of judge who surrounds himself with diverse perspectives and always seeks to learn.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

Not applicable

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **Yes**

62. Attach a brief statement explaining why you are seeking this position.

***See* Attachment A.**

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

***See* Attachments B and C.**

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

Not applicable

65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.

Not applicable

Attachment A

Statement of Interest

Early in my career, in the trial of a civil rights case, *Pettit v. Smith*, I received two notes that gave me tremendous faith in the power of our courts to do good. The first note was from a juror a few days after the trial ended. She described beginning the trial overwhelmed by the responsibility of serving as a juror, but ending the trial incredibly proud to have taken part in it. When our courts are at their best, they can instill that type of faith among citizens who interact with the courts firsthand. And that faith can be infectious in the community.

The second note was from my client. It was a short note of thanks, sitting on my chair as I returned from giving my closing argument at the lectern. Despite the fact that my client had made many significant mistakes in his life—and is viewed by most primarily through the lens of those mistakes—his notes and other acts of kindness towards me during our time together remind me of the humanity and complexity of each individual who walks through our courtrooms. Although legal work can sometimes feel abstract or cerebral—and is often done in an office far from those who will be most directly impacted by the work—I have tried always to keep the human impact of my work at the forefront of my mind. To help serve as a reminder, I have kept Mr. Pettit's note in a frame on my desk for the past 10 years.

Throughout my career, I have kept both notes in mind, and have sought to serve in ways that impact individuals directly, impact the community more broadly, and challenge me intellectually. I've been privileged to do that type of work in a variety of settings thus far, and it is precisely why I am drawn to serve as a member of the Arizona Supreme Court.

I began my career clerking on the Arizona Supreme Court and Ninth Circuit, where I learned firsthand how our courts function behind the scenes and the very human (and thus sometimes flawed) process by which consequential decisions are made. Then, in private practice, my clients included indigent Arizonans, large corporations, criminal defendants, and asylum-seekers who had fled persecution.

As an Assistant U.S. Attorney, I had the privilege of serving all around Arizona, spending much of my time in tribal communities and other rural communities. Now, as Arizona's Principal Deputy Solicitor General, I handle issues of statewide importance on a near-daily basis. I even had the great privilege of representing Arizona before the United States Supreme Court earlier this year.

I have also focused on making an impact outside the courtroom, as I would hope to do if appointed to the Court. As an Assistant U.S. Attorney, I helped the U.S. Attorney's Office secure funding to hire a Missing & Murdered Indigenous Persons Coordinator and I supervised the Coordinator's work with tribal, state, and federal partners. I similarly assisted the Salt River Pima-Maricopa Indian Community in securing grant funding for a tribal prosecutor who served as a Special Assistant U.S. Attorney and split time between our offices, enhancing tribal/federal cooperation.

I am particularly proud to have worked with the district court to develop the Northern Arizona Reentry Court Pilot Project, which works directly with offenders from tribal communities who have been recently released from custody. Chief among other unique aspects of that program, a federal judge travels to the community to hold court rather than requiring community members to travel several hours to Flagstaff or Phoenix. The original Reentry Court is held every six weeks in Chinle, Arizona, on the Navajo Nation, and the program is now being expanded elsewhere. I was thrilled to be in Chinle last year for the graduation of the program's first graduate.

On a personal note, I love Arizona. As a native Ohioan who grew up surrounded by tall trees, I love the feeling I get seeing for miles in every direction and seeing such diverse landscapes and diverse communities so close together. Former colleagues of mine will tell you how eager I was to travel around the state for my work at the U.S. Attorney's Office. And my friends will tell you about my passion for Arizona's remote and less-frequently-visited places. Public service is great in the abstract, but serving a community that I feel a deep connection to has been especially rewarding.

The Arizona Supreme Court seems to me an ideal place to continue that service. I know from firsthand experience—as a law clerk at the Court 13 years ago and as an attorney who practices regularly in the Court now—that the work of the Court presents constant intellectual puzzles on a wide variety of issues of great importance to our state. With the right amount of hard work and courage, the Justices can change individual lives and communities for the better.

I believe strongly that we need judges who care—about the law, about the reputation and functioning of our courts, and about the people who appear before them. I hope to get the opportunity to serve as one of them.

Attachment B

Writing Sample

United States v. Nez
Sentencing Memorandum

GARY M. RESTAINO
United States Attorney
District of Arizona

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America, Plaintiff, v. Melody Gwen Nez, a.k.a. Melody Gwen Riggs, a.k.a. Melody Gwen Riggs-Nez, Defendant.	No. CR-21-08130-PCT-DWL **GOVERNMENT'S SENTENCING MEMORANDUM**

In August 2021, Defendant Melody Nez threw her five-year old stepson (John Doe) out the open window of a moving truck, in front of her own children. This was not an isolated act, but rather the culmination of consistent abuse Nez inflicted upon John Doe over the course of weeks. As a result of Nez's abuse, John Doe suffered injuries that included an array of broken bones, a fractured skull, and a brain bleed. When asked about the source of John Doe's injuries, Nez told medical personnel and law enforcement John Doe fell off a trampoline. Perhaps worse, she told her children to tell the same lie to protect her. During a second interview, Nez admitted to slapping John Doe and "shoving" him out of her truck. For her actions, Nez should be sentenced to 60 months' imprisonment.

I. Nez has pleaded guilty and the applicable Guidelines range is 41-51 months.

For her actions, Nez was charged with two crimes: (1) Assault Resulting in Serious Bodily Injury; and (2) Child Abuse. She pleaded guilty to the first of those crimes, which carries a maximum penalty of 10 years' imprisonment.

The United States agrees with the Guidelines calculations in the Presentence Report, Doc. 34. Those calculations provide for a base offense level of 14 and several applicable enhancements. Six levels are added to reflect the seriousness of the injuries suffered by the victim. (Doc. 34 (PSR) at ¶ 21 (citing U.S.S.G. § 2A2.2(b)(3)(E)).) Two levels are added because Nez knew or should have known the victim was especially vulnerable. (Doc. 34 (PSR) at ¶ 22 (citing U.S.S.G. § 3A1.1(b)(1)).) Finally, two levels are added because Nez used at least one minor to assist in avoiding detection and/or apprehension for the offense. (Doc. 34 (PSR) at ¶ 23 (citing U.S.S.G. § 3B1.4).) Specifically, Nez told her children to lie about the events underlying this case.

With a downward adjustment for acceptance of responsibility, and with Nez's criminal history category of II, the applicable Guidelines range is 41-51 months.

II. A sentence above the Guidelines range is appropriate.

As is detailed above, the 41-51 month range takes into account several appropriate factors relating to the seriousness of Nez's crime. It accounts for the seriousness of John Doe's injuries, that John Doe was particularly vulnerable, and that Nez told her children to lie about what happened. It does not, however, take into account the full scope of Nez's actions and culpability.

Ample reason exists to depart or vary above the Guidelines range. To begin, the Guidelines allow for an upward departure for "extreme conduct" where "the defendant's conduct was unusually heinous, cruel, brutal, or degrading to the victim." U.S.S.G. § 5K2.8. Nez's conduct qualifies here. This was no ordinary assault (although Nez's conduct in the weeks leading up to John Doe's hospitalizations also included at least slapping, pushing, and kicking (*see* PSR ¶¶ 6-9)). Nez not only threw John Doe from a vehicle, she did it (1) through an open window of a truck (ensuring John Doe would fall

from significant distance above the ground), (2) while the vehicle was moving, (3) in front of other children in her care. These facts support a potential upward departure for extreme conduct.

At least two other Guidelines provisions may provide reason to depart upwards. Although Nez has already been assessed two levels for using a minor to avoid being held responsible for her crime, that Guideline's commentary notes that an upward departure "may be warranted" where "the defendant used or attempted to use more than one person less than eighteen years of age." U.S.S.G. § 3B1.4 at App. Note 3. That was the case here, as Nez instructed at least two children to lie for her. (Doc. 34 (PSR) at ¶ 9.)

Finally, a departure to account for dismissed and/or uncharged conduct could be warranted. *See* U.S.S.G. § 5K2.21. The crime of conviction and plea agreement focus on the August 19 conduct detailed throughout this memorandum, but the plea agreement also provides that Nez shall not be prosecuted for the additional abuse discovered during the investigation of this case. (Doc. 28 (Plea Agreement) at 5.) Moreover, the plea agreement provides for dismissal of Count Two, a charge that could have carried a 10-year mandatory minimum sentence. *See* Ariz. Rev. Stat. §§ 13-3623(A), 702, and 705.

III. Nez should be sentenced to 60 months.

Whether through an upward departure, variance, or both, an above-Guidelines sentence is warranted here. Ultimately, though, the appropriate sentence must be determined by close analysis of the § 3553(a) factors. Those factors support imposition of a 60-month sentence.

For starters, the nature and circumstances of the offense are not only serious, but heinous. Even in comparison to other aggravated assault cases and other child abuse cases, the conduct in this case stands out. And the harm inflicted by that conduct was tremendous. John Doe suffered "a fractured right clavicle, bilateral pubic fractures, bilateral fractured femurs, a humerus fracture, bruising, and a fractured skull." (Doc. 28 (Plea Agreement) at 7-8 (Factual Basis).) He also suffered a "right wrist injury, right thumb fracture, [and] severe dehydration . . . ." (Doc. 34 (PSR) at ¶ 5.) Medical personnel even observed "bite

marks" and "face lacerations." (Doc. 34 (PSR) at ¶ 5.) Of course, with the abuse he faced and the injuries he suffered, John Doe's physical and emotional scars will be long-lasting. Moreover, Nez's own children will likewise have suffered trauma from this abuse, as it will undoubtedly have affected them to have watched their mother abuse a five-year-old stepsibling, even setting aside that she then asked them to lie to authority figures about that abuse to keep her out of prison.

As for the history and characteristics of the defendant, this is unfortunately not Nez's first encounter with the criminal justice system. She was convicted of Extreme DUI in 2012. (Doc. 34 (PSR) at ¶ 31.) And in 2014, she was convicted of endangering the life/health of a minor and providing false information to law enforcement. (Doc. 34 (PSR) at ¶ 33.) Those convictions resulted from Nez leaving two small children in her car, "covered by a large windshield sun visor." (Doc. 34 (PSR) at ¶ 33.) Although the instant case will provide Nez's first felony conviction and first lengthy period of time in custody, her prior misdemeanor history illustrates that the events in this case were not the first time she endangered the safety of the community or of children in her care.

On the other hand, there are undoubtedly mitigating factors present here, not just aggravating ones.[1] The mitigation is well-detailed in ¶¶ 43-56 of the Presentence Report. Just as the conduct here stands out from similar cases, so too does the mitigation. Nez has suffered tremendous trauma and her history is deserving of significant consideration from the Court. Indeed, the United States believes that history merits imposition of a lesser sentence than would be imposed on a defendant without that mitigating history who has committed a similar crime. The United States' 60-month recommendation, however, adequately takes that mitigation into account.

---

[1] Indeed, the Presentence Report Writer's recommendation makes explicit the countervailing factors here in recommending three levels of upward departures and a two-level downward variance. (Doc. 34 (PSR) at 21.)

On balance, a 60-month sentence is "sufficient, but not greater than necessary, to comply with the purposes set forth in [§ 3553(a)(2)]." 18 U.S.C. § 3553(a). And consideration of those factors demonstrates why a lesser sentence would be inappropriate. A substantial sentence is needed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). So too must the sentence "afford adequate deterrence to criminal conduct" and "protect the public from further crimes of the defendant." 18 U.S.C. § 3553(a)(2)(B), (C).

Despite her mitigating personal history, Nez has demonstrated that she is a severe danger to those around her, especially the most vulnerable individuals around her. Nez's crime here was unusually heinous and caused extraordinary injury to a young child. That injury was surely not just physical and will just as surely leave lasting wounds that will permeate various aspects of John Doe's physical and emotional life. Nez's own traumatic history may help explain her behavior, but it cannot excuse it. Tragically, she has demonstrated that a significant prison sentence is necessary to protect the children in her life from suffering the types of traumas that she herself suffered. A 60-month term of imprisonment should be imposed.

Respectfully submitted this 15th day of November, 2022.

GARY M. RESTAINO
United States Attorney
District of Arizona

s/Alexander W. Samuels
ALEXANDER W. SAMUELS
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Attachment C

Writing Sample

United States v. Cooper
Ninth Circuit Answering Brief Excerpt

C.A. No. 16-10523

D. Ct. No. CR-16-08004-PCT-JJT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NICHOLAS LEE COOPER,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

BRIEF OF APPELLEE

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Date Submitted via ECF: August 11, 2017

C. The district court did not commit *Tapia* error by discussing rehabilitation at sentencing.

1. Standard of Review

This Court reviews sentences "under an abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 51 (2007). In doing so, it "must first ensure that the district court committed no significant procedural error." *Id.*

2. Argument

Citing *Tapia v. United States*, 564 U.S. 319 (2011), Cooper argues that the district court erred by lengthening his sentence to ensure he was eligible for the Bureau of Prisons Residential Drug Abuse Program ("RDAP"), also commonly referred to as the 500 Hour Program. (Op. Br. at 17-19.) To be sure, a sentencing court "may not impose or lengthen a prison sentence to enable an offender to complete a treatment program," such as RDAP. *Tapia*, 564 U.S. at 335. Here, the district court simply did not violate *Tapia*'s mandate.

Before delving deeper into what a district court may *not* do, it is helpful to note what is permitted in this context. "A court commits no error by discussing the opportunities for rehabilitation within prison or the benefits of specific treatment or training programs." *Id.* at 334. "To the contrary, a court properly may address a person who is about to begin a prison term about these important matters." *Id.* Moreover, "a court may urge the BOP to place an offender in a prison treatment program." *Id.* A sentencing court does "nothing wrong – and probably something

very right – in trying to get [a defendant] into an effective drug treatment program." *Id.*

It is only when a sentencing court "impose[s] or lengthen[s] a prison sentence to enable an offender to complete a treatment program" that a sentence offends *Tapia*. *Id.* at 335. This allegation arises most often, as it does here and as it did in *Tapia*, in the context of the RDAP program, an in-prison drug treatment program that ordinarily requires an inmate to "have at least 24 months remaining on her sentence" to be eligible. *Id.* at 337 (Sotomayor, J., concurring) (citation omitted). Put simply, *Tapia* holds that a district court may not impose a lengthier sentence for the sole purpose of ensuring that a defendant meets this RDAP eligibility requirement.

The district court here did no such thing. When explaining the reasons for its sentence, the district court first expressed "concerns about [the defendant's] criminal history," including that some of his criminal history was violent, the fact that the instant offense involved firearms, and the "risk to the community" that Cooper presents. (RT 12/5/16 23; ER 28.) The court pointed out that "[j]ust getting to a Criminal History Category IV is not an easy thing to do," particularly where, as in Cooper's case, some criminal convictions were not included in the calculation because they resulted from juvenile adjudications and others were not included because they were more than ten years old. (RT 12/5/16 24; ER 29.) The court

likewise noted that the Government had made "some good points about a justification for a lengthy sentence," which had included the involvement of two separate firearms in the offense, Cooper's prior criminal record (including his history of violent and dangerous offenses), protection of the public, and deterrence. (RT 12/5/16 19-24; ER 24-29.)

In the end, after discussing these factors and "being mindful of the notion of restraint," the district court imposed a 37-month sentence, nine months below the low-end of the applicable Guidelines range. (RT 12/5/16 24-25; ER 29-30.) In doing so, the district court expressed its belief that a 37-month sentence was "sufficient to address all of these issues." (RT 12/5/16 25; ER 30.) The district court then discussed the RDAP program:

> And one of the other things it does is I have a concern that sometimes people are recommended for the RDAP program and then their sentence is not quite long enough to allow them to qualify under the Bureau of Prisons and I think you need to be there -- you need to have a remaining time in your sentence by the time you go in of about 24 or so months to be able to get in. **You've already served seven so that is one added benefit of the length of the sentence that I am imposing, is that it gives the Bureau of Prisons ample opportunity to include you, although that is not driving my sentence.** It is that given the criminal history and given the other risks as well, 37 months is merited and so that is what I am going to do in this case.

(RT 12/5/16 25; ER 30 (emphasis added).) After sentence was imposed, defense counsel raised the *Tapia* issue with the court, stating, "the Court is precluded from increasing a defendant's sentence for the purpose of qualifying for the RDAP

program." (RT 12/5/16 28; ER 33.) The court responded: "That's right. And I believe I said expressly that it wasn't my reason." (RT 12/5/16 28; ER 33.)

This case thus stands in stark contrast to *Tapia* itself, where the district court noted that it was imposing a certain sentence "so [the defendant] is in long enough to get the 500 Hour Drug Program, number one." 564 U.S. at 322; *see also United States v. Grant*, 664 F.3d 276 (9th Cir. 2011) (finding *Tapia* error where district court said, "in order to get you into the kind of programs we need to get you in, we need at least 24 months. And that's one of the reasons I selected that time."); *United States v. Cordery*, 656 F.3d 1103, 1105 (10th Cir. 2011) (finding *Tapia* error where court said that "[p]art of my reason for imposing that sentence is that . . . he needs a sentence of at least 56 months to be able to successfully complete [the RDAP] program together with mental health counseling").

The district court here made no express statement that it was lengthening Cooper's sentence to ensure he was eligible for the RDAP program, as in cases where courts have reversed and remanded for resentencing. Indeed, the district court here did precisely the opposite—it provided other, legitimate reasons for its sentence and expressly stated twice that the RDAP program eligibility requirement was not "driving [its] sentence." (RT 12/5/16 25, 28; ER 30, 33.) The district court's actions here were thus entirely consistent with this Court's directive that while sentencing judges "may wisely believe that [a sentence] will have rehabilitative benefits," they

must "make and articulate their imprisonment decisions in terms of the other legitimate sentencing criteria." *Grant*, 664 F.3d at 282. The court here "did nothing wrong – and probably something very right – in trying to get [the defendant] into an effective drug treatment program." *Tapia*, 564 U.S. at 334.

Attachment D

List of AAGs

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OFFICE OF THE ARIZONA ATTORNEY GENERAL
OPERATIONS DIVISION

HUMAN RESOURCES
SECTION

TO: Whom This May Concern

FROM: Human Resources – Attorney General Office

DATE: 10/23/2024

RE: List of AGO Attorneys as of 10/23/2024

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Attachment E

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Alanna Kennedy	Raynette Logan	Gayle Helart	David Conti	Seth Goertz	Liza Granoff (Tuc)	Matthew Doyle	Ross Arellano Edwards
Vinnie Lichvar	Tina Reid-Moore	Sheila Phillips	Jennifer Corbet	Aron Ketchel	Abbie Broughton-Marsh (Phx)	Travis Wheeler	Noah Coakley
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				Lindsay Short	Dave Pimsner (Phx)	John Ballos	LeighAnn Thomas
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Rui Wang - Chief

Raquel Arellano Violent Crime Tucson	Brian Hopkins Southwest Border Crime 1 - Tucson	Heather Siegele Southwest Border Crime 2 - Tucson	Fran Kreamer Hope Southwest Border Crime 3 - Tucson	Rob Fellrath OCDETF Tucson	Lori Price Financial Crimes Public Corruption Tucson
Brandon Bolling	**Ashley Enderle, Deputy Chief – Southwest Border**			Ashley Culver	Gordon Davenport
Matt Cassell	Art Aguilar (Detail)	Pat Barry	Josh Ackerman	Matt Eltringham	Mary Sue Feldmeier
Carin Duryee	Jennifer Berman	Kelly Cavanaugh	Fred Cocio	Stefani Hepford	Jonathan Granoff
Sarah Houston	Michelle Chamblee	Christine Melton	Austin Fenwick	Jared Kreamer Hope	Sandy Hansen
Adam Rossi	Ryan DeJoe	Sarah Precup	Renda Maginnis	Michael Lizano (SLC)	Mike Jette (Detail)
Serra Tsethlikai	Carson Gilbert	Alexandria Saquella	Tanya Miller	David Petermann	Monica Ryan (Detail)
Nate Walters	Anshul Krishn	David Savel	Jose Solis (SAUSA)	Craig Russell	Pete Sabori
	Alicia Quezada	Kevin Schiff	Evan Nicole Wesley	Christina Vejar	Vince Sottosanti
	Joseph Rieu (SAUSA)	Micah Schmit		**Asset Forfeiture**	Jane Westby (SLC)
		Julie Sottosanti		Reese Bostwick	David Zipps

APPELLATE DIVISION
Krissa Lanham - Chief

Deputy Chief Chris Cabanillas	
Phoenix	**Tucson**
Karla DeLord	Terry Crist, III
Peter Kozinets - SLC	Corey Mantei
Caitlin Noel	

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CIVIL DIVISION Melissa Kroeger, Tucson Chief Kate Branch, Phoenix Chief		
Bill Solomon, Phoenix Deputy Chief		
Phoenix - Kate	**Phoenix - Bill**	**Tucson - Melissa**
Dina Anagnopoulos	Lisa Hemann	Vincent Creta (FLP - Phx)
Noel Capps	Lon Leavitt (ACE)	Denise Faulk
Brock Heathcotte	Anne Nelson (ACE)	Cole Hernandez
Emory Hurley	Theo Nickerson	Kaitlin Hollywood
Connie Mudd	Bill Solomon (Civ Rights)	Sarah Letzkus
Neil Singh	William Staes	Jennifer Levinson (FLP - Phx)
Larry Tinsley		Michael Linton
Javier Torres		Gabriel Peraza
		Scott Turk (FLP)

SENIOR LITIGATION COUNSEL
Peter Kozinets (Phx) - SLC for Written Advocacy
Bridget Minder (Phx) - SLC for Trial Advocacy
Jane Westby (Tuc) - SLC for Professional Development
Mike Lizano (Tuc) - SLC for Investigations

VICTIM WITNESS Supervisor Marlene Beall	
Phoenix	**Tucson**
Gwendolyn Adakai	Kelly Blasko
Michelle Linski	Cisco Garcia
Todd McKenney	Jessica Olivas
Eydie Robertson	Jovana Uzarraga
Flagstaff	
Mary Williams	